

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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SHEET METAL WORKERS' NATIONAL  
PENSION FUND, et al.,

**ORDER**

08-CV-1315 (DRH) (AKT)

Plaintiffs,

-against-

SKYE SHEET METAL, INC., et al.,

Defendants.

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**HURLEY, District Judge:**

On November 3, 2008, this Court granted Plaintiffs' motion for an entry of default judgment against defendants Skye Sheet Metal, Inc., Renee Assadourian, and Renee Negron (collectively, "Defendants") and referred the case to Magistrate Judge A. Kathleen Tomlinson, pursuant to 28 U.S.C. § 636(b)(3), for a report and recommendation as to damages and attorneys' fees. On June 22, 2010, Judge Tomlinson issued a Report and Recommendation that Defendants be held jointly and severally liable to Plaintiffs for the following amounts: (1) \$7,550.79 for unpaid fringe benefits; (2) \$1,509.98 in liquidated damages; (3) 1,100.00 in attorneys' fees; and (4) \$605.00 in court costs and disbursements, for a total sum of \$10,765.77. Judge Tomlinson also recommended that Plaintiffs be awarded prejudgment interest on the unpaid contributions for the period beginning on the date the contributions became delinquent and running through the date that judgment is entered here. She deferred determination, however, on the amount of the interest rate, pending receipt of further submissions by Plaintiffs. Such submission was made to this Court

by letter dated June 24, 2010, a copy of which was served upon Defendants on June 29, 2010. On June 22, 2010, Plaintiffs served Defendants with a copy of the Report and Recommendation. More than fourteen days have elapsed since service of the Report and Recommendation. No party has filed any objections.

Pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72, this Court has reviewed the Report and Recommendation for clear error, and finding none, now concurs in both its reasoning and its result. Accordingly, the Court adopts the June 22, 2010 Report and Recommendation of Judge Tomlinson as if set forth herein.

In addition, as noted by Judge Tomlinson, Plaintiffs are entitled to recover interest on the unpaid fringe benefits at “the rate provided under the plan, or if none, ‘the rate prescribed under section 6621 of Title 26.’” *Cement and Concrete Workers Dist. Council Welfare Fund v. Azzarone*, 2007 WL 2712314, at \*3 n.4 (E.D.N.Y. Sept. 13, 2007) (quoting 29 U.S.C. § 1132(g)(2)). Judge Tomlinson’s review of the relevant Trust Agreements led her to conclude that the agreements contain varying provisions regarding interest rates on delinquent contributions. (Report and Recommendation at 13, ECF No. 17.) By letter dated June 24, 2010, Plaintiffs indicate, consistent with Judge Tomlinson’s findings, that the “Trustees have not fixed a rate” and thus request that prejudgment interest be granted at the rate prescribed by § 6621 of the Internal Revenue Code, 26 U.S.C. § 6621. (Pls’ June 24, 2010 Letter, ECF No. 20.) Because the amount of the interest rate was never decided by Judge Tomlinson in her Report and Recommendation, Defendants’ time to object has not yet begun to run. Accordingly, Defendants are hereby given fourteen days from service of this

Order to submit their position on the amount of the interest rate. Should Defendants fail to do so, the Court will grant Plaintiffs' request and apply the rate prescribed by § 6621 of the Internal Revenue Code.

In sum, the Court adopts the June 22, 2010 Report and Recommendation of Judge Tomlinson in its entirety. The Court will issue a separate order directing entry of judgment once the interest rate has been conclusively determined.

**SO ORDERED.**

Dated: Central Islip, N.Y.  
August 5, 2010

/s/  
Denis R. Hurley,  
United States District Judge